

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7524 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARVIND MILLS LTD

Versus

K R PANCHAL

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Appearance:

MR V.B. PATEL, SR. ADVOCATE WITH MR. DEEPAK V

PATEL for Petitioner

MS SADHANA SAGAR for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 05/11/98

ORAL JUDGEMENT

Rule. By way of this Special Civil Application the petitioner seeks a direction to quash and set aside the order of the Industrial Court, Ahmedabad, dated 21.5.1997 passed in appeal (IC) No. 122 of 1993 so far it relates to the direction of allowing respondent employee to join duties.

2. Necessary facts are the respondent workman was appointed as Assistant by order dated 28.12.1973. By order dated 1.10.1976 he was transferred to Data Processing Department. On 8.10.1976 it was reported that the respondent has not resumed his work in the said department. He was therefore advised to join the said department. There was some misunderstanding with respect to the designation given to him which was clarified by the management. Still the respondent did not join the duty. In view of the adamant attitude of the respondent workman the management issued show cause notice and ultimately enquiry was instituted against him. The respondent was charged for the wilful insubordination and also for absence without leave from 8.10.1976 to 3.11.1976. The enquiry officer found misconduct proved. The management accordingly passed the order of discharge simpliciter on payment of one month's wages. The workman approached the Labour Court under the provisions of BIR Act, 1946. The application was registered as T. Application no. 48 of 1977. The Labour Court found that all the charges of misconduct proved against the respondent workman but directed reinstatement with continuity in service without backwages. The petitioner preferred appeal against the said order to the Industrial Court, Ahmedabad. The appellate court found that when the order of discharge is quite legal and proper, no order granting reinstatement could be passed. In view of this, the appellate court by impugned order dated 21.5.1997 partly allowed and directed the company to permit the respondent employee to join his duties at the place where he was transferred in the Data Processing Department without continuity of service and without any backwages.

3. Assailing the said judgement Mr. Patel, senior advocate, contends that the appellate court has committed an error in giving direction for reemployment of the respondent employee once having found the order of discharge valid. Reliance is placed on the decision of the apex court in the case of GUJARAT ELECTRICITY BOARD VS. ATMARAM reported in 1989 11 LLJ 470 (SC). On the other hand Ms. Sadhana Sagar, appearing for the respondent, submits that there is no illegality in the order of the appellate court.

4. I have considered the rival contentions. Both the courts below have found misconduct against the

respondent workman proved. The management has only passed an order of discharge simpliciter. No justified reason has been given by the first appellate court for passing of the order of reinstatement. The appellate court has also found the order of discharge quite legal and proper. In view of this finding, the appellate court had no jurisdiction to direct the petitioner to allow the respondent workman to join his duties which virtually amounts to giving direction for reinstatement. The direction is ex-facie arbitrary and illegal.

In view of the aforesaid, this Special Civil Application is allowed and the order of the Industrial Tribunal dated 21.5.1997 so far as it relates to giving the direction to the petitioner to permit the respondent employee to join his duties is quashed and set aside. A further direction of giving continuity of service cannot be sustained and the same is also quashed and set aside. Rule made absolute.

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